



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: LVO - 206578

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**PRELIMINARY RECITALS**

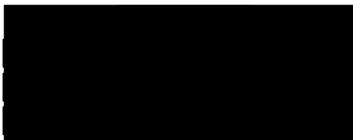
Pursuant to a petition filed on October 17, 2022, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit regarding to collect a delinquent W2 overpayment claim and a delinquent child care subsidy claim by placing a levy on Petitioner's wages, a hearing was held on December 14, 2022, by telephone.

The issue for determination is whether the agency correctly issued a levy for repayment of a public assistance debt.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Children and Families  
201 West Washington Avenue  
Madison, WI 53703

By: Sheila Postler  
Public Assistance Collection Unit  
P.O. Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 4, 2014, America Works W-2 Program ("the W-2 agency") mailed a Wisconsin Works Overpayment Notification to Petitioner which stated she had been paid W-2 payments that she was not eligible to receive from June 6, 2013 to March 31, 2014 and that the total amount of overpaid benefits was \$5,114. The notice further stated that the overpayment was due to client error; specifically, a failure to report earned income, that she was liable to repay that amount, and that, if she disagreed with the decision, she had 45 days to request a W-2 Fact Finding. The agency assigned claim number [REDACTED] to this overpayment.
3. On or about July 3, 2014, the agency reduced W-2 overpayment claim [REDACTED] from \$5,114 to \$3,115 after receiving documentation from Petitioner that showed her employment had ended as of December 15, 2013.
4. On June 3, 2014, the W-2 agency mailed Petitioner a repayment agreement advising her that she must repay the \$5,057 outstanding W-2 overpayment claim in full or return a signed repayment agreement by June 25, 2014.
5. On June 1, 2015, the Department of Children and Families, or an agent of that Department, issued a notice to Petitioner advising her that she had been overpaid \$4,748.27 in child care subsidy benefits for the time period September 7, 2014 through January 31, 2015. The agency assigned claim number [REDACTED] to this overpayment.
6. On July 2, 2015, the State of Wisconsin's Public Assistance Collection Unit ("PACU") mailed Petitioner a second repayment agreement advising her that she must repay the \$3,050 outstanding W-2 overpayment as well as the recently established \$4,748.27 child care subsidy overpayment or return a signed repayment agreement by July 25, 2015.
7. On July 9, 2015, Petitioner met with an agency representative and discussed the child care overpayment.
8. On January 25, 2016, March 4, 2016, and April 16, 2021, August 2, 2021, Petitioner called the agency and agreed to make voluntary monthly payments.
9. Prior to October 1, 2022, Petitioner made one \$14.50 voluntary repayment towards the W-2 overpayment claim and the agency took the following involuntary collection actions: withheld \$65 from Petitioner's W-2 cash benefit on April 24, 2015 and filed one or more levy actions resulting in garnishment of Petitioner's wages from May 12, 2017 through March 7, 2018. The total amount of wages garnished during that time period was \$519.39.
10. As of October 1, 2022, a total of \$598.89 had been paid towards the original \$3,115 W-2 overpayment; thereby reducing the outstanding claim amount to \$2,516.11.
11. Prior to October 1, 2022, the agency took the following involuntary collection actions to recoup the child care overpayment claim: intercepted tax refunds or credits that Petitioner would otherwise have been due on April 26, 2016, September 12, 2017, June 6, 2018, September 22, 2020, February 24, 2021, June 22, 2021, and March 8, 2022 and filed one or more levy actions resulting in garnishment of Petitioner's wages from May 31, 2017 through September 7, 2017. The total amount of wages garnished during that time period was \$150. The total amount collected via tax intercept was \$2,071.73.
12. As of October 1, 2022, a total of \$2,221.73 had been paid towards the original \$4,748.27 child care subsidy overpayment; thereby reducing the outstanding claim amount to \$2,526.54
13. On June 1, 2022, the agency assessed an \$8 collection fee and on September 30, 2022, it assessed a \$26.50 collection fee.

14. On October 1, 2022, the agency sent Petitioner a notice advising her that the Public Assistance Collection Section (formerly, Public Assistance Collection Unit) had issued a levy to seize up to \$5,077.12 of any of her property “in the possession of or under the control of [REDACTED],” her employer. That amount represented the combined outstanding balances of the W-2 and child care subsidy overpayment and \$34.50 of collection fees.
15. On October 17, 2022, Petitioner filed a request for hearing seeking review of the October 1, 2022 levy action.

### DISCUSSION

Where an individual is subject to a specified overpayment of public assistance, a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is a levy under Wis. Stat., §49.195 (3N).

Wis. Admin. Code §DCF 101.23(10)(b) provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. *The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor.* §DCF 101.23(10)(e).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For overpayments of W-2 benefits, the person must request a fact finding review within 45 days of the notice. For overpayments of child care subsidies, the person must request a fair hearing within 45 days of the notice. Once the time limit for appealing is past, the person no longer can appeal whether she owes the amount. In this case, Petitioner did not dispute that she received notice of the W-2 and child care subsidy overpayments sent to her in 2014 and 2015 respectively. Moreover, it is clear that she has been aware of the overpayments for years based on her frequent contacts with the agency (see Findings of Fact Nos. 7 and 8 and Respondent’s Exhibit 12) and because she has been subject to various collection actions that she is likely to have noticed including wage garnishments and tax intercepts. Under these circumstances, I do not have authority to review either overpayment action at this time.

Since I cannot review the overpayment action, the appeal is limited to questions of prior payment of the debt and mistaken identity of the debtor. The agency contended that it had authority to place the levy in question because Petitioner’s W-2 and child care overpayment debts have long been delinquent. The agency substantiated that contention with copies of repayment agreements and dunning notices sent to Petitioner and with repayment records for both the W-2 overpayment claim and the child care subsidy overpayment claim maintained by PACU. The repayment records also established that the \$5,077.12 payment demand included in the October 1, 2022 levy was correctly calculated.

Petitioner did not present any evidence to refute the agency’s evidence regarding the prior payments she has made or the outstanding balance of the debt. Rather, Petitioner questioned whether the agency had proof that she was receiving W-2 benefits while working and whether the agency had proof that her children were in child care during the periods that the overpayments arose. Those are questions that would have been relevant in an appeal regarding the merits of the overpayment but they are not germane to the issues I have authority to consider; namely, the amount and timing of prior voluntary and involuntary payments made by Petitioner towards her past due public assistance debt.

For the reasons set forth above, I conclude that the agency has the authority to recover the unpaid W-2 and child care overpayments through a levy action.

### **CONCLUSIONS OF LAW**

The agency is authorized to recover the unpaid public assistance debt through a levy action.

**THEREFORE, it is** **ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

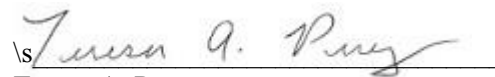
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

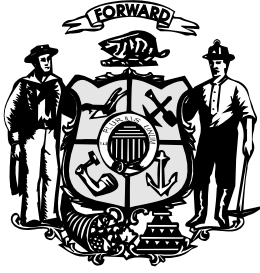
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of February, 2023



Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 1, 2023.

Public Assistance Collection Unit